Review Article

Medical negligence: Indian legal perspective

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Abstract

A basic knowledge of how judicial forums deal with the cases relating to medical negligence is of absolute necessity for doctors. The need for such knowledge is more now than before in light of higher premium being placed by the Indian forums on the value of human life and suffering, and perhaps rightly so. Judicial forums, while seeking to identify delinquents and delinquency in the cases of medical negligence, actually aim at striking a careful balance between the autonomy of a doctor to make judgments and the rights of a patient to be dealt with fairly. In the process of adjudication, the judicial forums tend to give sufficient leeway to doctors and expressly recognize the complexity of the human body, inexactness of medical science, the inherent subjectivity of the process, genuine scope for error of judgment, and the importance of the autonomy of the doctors. The law does not prescribe the limits of high standards that can be adopted but only the minimum standard below which the patients cannot be dealt with. Judicial forums have also signaled an increased need of the doctors to engage with the patients during treatment, especially when the line of treatment is contested, has serious side effects and alternative treatments exist.

Key Words

Indian legal perspective, judgment, medical negligence

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Introduction

The term "medical negligence" is an omnibus one, which has come in vogue to refer to wrongful actions or omissions of professionals in the field of medicine, in pursuit of their profession, while dealing with patients. It is not a term defined or referred to anywhere in any of the enacted Indian laws.

This article seeks to outline the basic features of "medical negligence" with minimal usage of legal phraseology. Furthermore, rather than exploring the thorny issues surrounding the subject matter, this piece is intended to be informative. The methodology adopted is descriptive; it is based on judicial opinions of the higher courts of India and is limited to select judicial opinions rather than being an encyclopedia of authorities.

The consequences of medical negligence under broad heads are outlined at the outset in this article, which are followed by an outline of the basic constituents of medical negligence and the duties of doctors together with certain illustrations and the minimum standards of care required under law. Thereafter, the article deals with the nature of information required to be imparted to the patient for the purposes of consultation and treatment and concludes after a reference to the general advisory issued by the Supreme Court for doctors to be taken as precautionary measures and the guidelines issued by the Supreme Court for protection of doctors from harassment if criminally prosecuted.

Overview of Consequences

The consequences of legally cognizable medical negligence can broadly be put into three categories:[2] (i) Criminal liability, (ii) monetary liability, and (iii) disciplinary action.

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Criminal liability can be fastened pursuant to the provisions of the Indian Penal Code, 1860 ("IPC"), which are general in nature and do not provide specifically for "medical negligence." For instance, Section 304A of IPC[3] (which deals with the death of a person by any rash or negligent act and leads to imprisonment up to 2 years) is used to deal with both cases of accidents caused due to rash and negligent motor vehicle driving and also medical negligence leading to the death of a patient. Similarly, other general provisions of IPC, such as Section 337[4] (causing hurt) and 338[5] (causing grievous hurt), are also often deployed in relation to medical negligence cases.

Civil liability, i.e., monetary compensation can be fastened under the general law by pursuing a remedy before appropriate civil court or consumer forums. An action seeking imposition of the civil liability on the erring medical professional is initiated by dependents of the deceased patient or by the patient himself (if alive) to seek compensation. Doors of permanent *lok adalats*, constituted pursuant to the Legal Services Authority Act, 1987, can also be knocked at by a complainant seeking relief in the relation to services "in a hospital or dispensary" which are considered to be "public utility services" within the meaning thereof, wherein first a conciliation is attempted and thereafter determination on merits of the matter is made. Permanent *lok adalats* are conferred powers akin to that of a civil court in specified matters (such as summoning and enforcing the attendance of witnesses) and have jurisdiction in the matters up to Rs. 1 Crore.[6]

Another consequence of medical negligence could be in the form of imposition of penalties pursuant to disciplinary action. Professional misconduct by medical practitioners is governed by the Indian Medical Council (IMC) (Professional Conduct, Etiquette, and Ethics) Regulations, 2002, made under IMC Act, 1956.[7] Medical Council of India (MCI) and the appropriate State Medical Councils are empowered to take disciplinary action whereby the name of the practitioner could be removed forever or be suspended. Professional misconduct is, however, a broad term which may or may not include medical negligence within its fold. For instance, in the context of lawyers, it is not only a professional misconduct but other misconduct also which may lead to imposition of disciplinary penalties, for example, violation of prohibition on liquor under Bombay Prohibition Act, 1949, by the advocate;[8] and perhaps a corollary may be extended for cases of medical negligence by medical professionals.

Basic Features of Medical Negligence and Standard of Care

To comprehend the scope of negligence, it is important to understand the scope of the duty imposed on a doctor or medical practitioner. A doctor or other medical practitioner, among others, has a duty of care in deciding whether to undertake the case or not, duty in deciding what treatment to give, duty of care in administration of that treatment, duty not to undertake any procedure beyond his or her control, and it is expected that the practitioner will bring a reasonable degree of skill and knowledge and will exercise a reasonable degree of care.[9]

Negligence, simply put, is a breach of duty of care resulting in injury or damage.

The causal relationship between breach and injury is a must for fastening the liability of negligence, and such cause must be "direct" or "proximate."[10] It is important to note that the test is an "or" one, and therefore the casual link can be either direct causation or proximate causation, and in both cases, negligence can be ascribed. For instance, where a patient with about 50% burns died 40 days after the date of a wrong blood type transfusion in spite of receiving substantial care thereafter postdetection of error; the finding of medical negligence could not be escaped as the causal relation between the transfusion of wrong blood type and death was proximate.[11]

The line between civil liability and criminal liability is thin, and no sufficiently good criteria have yet been devised by the Supreme Court providing any clear and lucid guidance. The Supreme Court in Dr. Suresh Gupta v. Govt. of NCT Delhi[12] put the standard for fastening criminal liability on a high pedestal and required the medical negligence to be "gross" or "reckless." Mere lack of necessary care, attention, or skill was observed to be insufficient to hold one *criminally* liable for negligence. It was observed in Dr. Suresh Gupta that mere inadvertence or simply a want of a certain degree of care might create civil liability but will not be sufficient to attract criminal liability. In this case, a young man was stated to have died during the simple procedure for nasal deformity for "not introducing a cuffed endotracheal tube of proper size as to prevent aspiration of blood from the wound in the respiratory passage," and the prosecution under Section 304A IPC was quashed by the Supreme Court setting aside the order of the High Court which had declined to quash the prosecution. The soundness of the view of the Supreme Court was subsequently doubted considering that word "gross" is absent in Section 304A IPC and that different standards cannot be applied for actions of the negligence of doctors and others. Consequently, the matter was placed for reconsideration before a bench of higher strength.[13]

Three-judge bench (bench strength in Dr. Suresh Gupta was two) in Jacob Mathew v. State of Punjab[14] on a reconsideration endorsed the approach of high degree of negligence being the prerequisite for fastening criminal liability as adopted in Dr. Suresh Gupta, and it was observed that "[i] n order to hold the existence of criminal rashness or criminal negligence, it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent." Supreme Court in Jacob Mathew observed that the subject of negligence in the context of medical profession necessarily calls for a treatment with a difference. In this case, an aged patient in an advanced stage of terminal cancer was experiencing breathing difficulties and the oxygen cylinder connected to the mouth of the patient was found to be empty. By the time replacement could be made, the patient had died. Supreme Court set aside the judgment of the High Court and held that the doctors could not be criminally prosecuted.

It would not be surprising if different benches of the Supreme Court in the above facts were to arrive at different conclusions. High Courts in both of the above cases, i.e., Dr. Suresh Gupta

and Jacob Mathew surely held views different from that of the Supreme Court. The abstract principles sometimes do pose difficulty in their application to facts, much like in the practice of medicine.

The criminal liability and civil liability are not exclusive remedies and for the same negligence, both actions may be available.

"Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires,"[15] as the standard of care from a doctor. It has been held by the courts that in the cases of medical negligence, Bolam test is to be applied, i.e., "standard of the ordinary skilled man exercising and professing to have that special skill," and not of "the highest expert skill."[16] This is applicable to both "diagnosis" and "treatment." It is noted that the Supreme Court has now observed the need to reconsider the parameters set down in Bolam test.[17]

Errors of judgment do not necessarily imply negligence.[18] Gross mistakes would, however, invite the finding of negligence such as use of wrong drug or wrong gas during the course of anesthetic process, delegation of the responsibility to a junior with the knowledge that the junior is incapable of performing the duties properly, removal of the wrong limb, performing an operation on the wrong patient or injecting a drug which the patient is allergic to without looking at the outpatient card containing the warning, and leaving swabs or other items inside the patients.[19] Persons not qualified in general or a certain branch of medicine yet embarking upon a treatment course in that field has been held to be negligent.[20] Not taking care of a premature baby who is given supplemental oxygen and blood transfusion for prevention of a disease called retinopathy of prematurity (which such premature children are highly prone to and which makes them blind progressively), and not seeking views of pediatric ophthalmologist, has been held to be an incidence of negligence.[21] Instances of senior doctor deciding to do a surgery but actually taking up another surgery at the same time and leaving the patient to the care of a junior doctor, who is not incompetent but has no experience as such (even if such junior doctor performs the surgery without mistakes) has also led to the finding of medical negligence.[22]

In the cases involving medical negligence, at the beginning, the person alleging the negligence has the initial onus to make out a case of negligence, and thereafter the onus shifts on to the doctor or the hospital to satisfy that there was no lack of care or diligence.[23] It may also be noted that for imposition of civil liability on the hospital, it is not necessary that treating doctors or the nursing staff be made a party (the hospital alone can be the party to the proceeding), and it is immaterial if the medical professionals are the permanent staff or come on a visiting basis.[24]

The standard of care is to be judged keeping in view the body of knowledge and equipment available at the time of the incident. For example, if the allegation is that a doctor was negligent on account of his failure to use a particular equipment which should have been used, the court would consider whether such equipment was "generally available at that point of time" and therefore available for use.[25] Every hospital cannot be expected to have state-of-the-art facilities and be fully equipped with the latest inventions and techniques. Sometimes, it becomes difficult to prove that certain equipment was generally available or not considering that there is no central or regional record of equipment used by medical professionals or hospitals. For instance, in a case where post a hernia operation in Hospital A, the arterial saturation of a diabetic patient could not be maintained due to unknown reasons, the patient had to be shifted to Hospital B which was equipped with a mechanical ventilator considering that Hospital A did not have it. The patient became comatose by the time he reached Hospital B and ultimately passed away. In this case, the State Commission fastened civil liability on Hospital A holding it guilty of medical negligence, among others, on the assumption (without any actual finding) that mechanical ventilators were generally available in Jaipur, Rajasthan, in September 2002 and Hospital A should have also had the same.[26]

While dealing with medical negligence cases, the opinions of the medical experts are often called for from both sides. Section 45 of the Indian Evidence Act, 1872, provides that when a court has to form an opinion on a point of science, the opinion of a person especially skilled in such science is considered "relevant." It is to be noted that a "relevant" opinion is not synonymous to the opinion being "conclusive" and law reports are replete with illustrations of expert opinions being discarded for one reason or another. The real function of the expert is to put before the court all the material together with reasons which induce him to come to a certain conclusion so that the court, even though not an expert, may form its own judgment using its own observation of those materials.[27] Experts only render opinions and those that are "intelligible, convincing, and tested"[28] become important factors in the determination of the matter together with other evidence. Therefore, while the courts do not substitute their views for the view of the experts but if they determine that the course adopted by the medical professional concerned was inconceivable or highly unreasonable, it would be open to the court to return a finding of medical negligence.

Treatment without informed consent may also amount to negligence

The existence of doctor–patient relationship is a prerequisite to fasten liability on the doctor. The relationship is fiduciary in nature, and the obligation on the medical practitioner is greater when the patient ordinarily has an imprecise understanding of the ailment, diagnostic process, treatment, and all its attendant consequences. Duty to act in the best interest, however, cannot be stretched to a level where actions are taken against the will of the patient or without the consent of the patient if the patient is capable of understanding. Every patient has a right of self-determination and to reject the treatment even if such rejection were to be considered foolish by most rationale standards, and the medical professional cannot impose his will. Medical practitioners can, however, act on the substituted consent, if the primary consent is not available for a variety of reasons such as patient being a minor, mentally unsound, and unconscious.

In Samira Kohli v. Dr. Prabha Manchanda,[29] a 44-year-old patient complaining of menstrual bleeding for 9 days,

underwent an ultrasound test and was advised laparoscopy test under general anesthesia for making an affirmative diagnosis. The patient, while under general anesthesia, was subjected to a laparoscopic examination and simultaneously with the consent of the mother waiting outside the operation theater, abdominal hysterectomy (removal of uterus) and bilateral salpingo-oophorectomy (removal of ovaries and fallopian tubes) were conducted. It was held by the Supreme Court that consent taken for diagnostic procedure/surgery is not valid for performing therapeutic surgery either conservative or radical except in life-threatening or emergent situations. It was also held that where the consent by the patient is for a particular operative surgery; it cannot be treated as consent for an unauthorized additional procedure involving removal of an organ on the ground that such removal is beneficial to the patient or is likely to prevent some danger developing in future, if there is no imminent danger to the life or health of the patient. Supreme Court in the process of arriving at its judicial opinion examined the concept of "real consent" in the UK and "informed consent" in the US and finding the US standards to be too high and unsuitable for Indian conditions expressly rejected the same. It was further held that a doctor must secure the consent of the patient, and such consent should be "real and valid," "adequate information" is to be furnished to the patient to enable him or her to make a balanced judgment, remote possibilities need not be disclosed, and the nature and extent of information to be furnished will be such as is considered "normal and proper by a body of medical men skilled and experienced in the particular field." Subsequently, Supreme Court in Malay Kumar Ganguly v. Sukumar Mukherjee[30] without reference to its previous judicial opinion in Samira Kohli emphasized on the need of doctors to engage with the patients during treatment, especially when the line of treatment is contested, has serious side effects and alternative treatments exist, and observed that "[i] n the times to come, litigation may be based on the theory of lack of informed consent."

Sanctity of professional judgments and other limitations

The legal system has to strike a careful balance between the autonomy of a doctor to make judgments and the rights of a patient to be dealt with fairly. Indian courts tend to give sufficient leeway to doctors and expressly recognize the complexity of the human body, inexactness of medical science, the inherent subjectivity of the process, genuine scope for error of judgment, and the importance of the autonomy of the medical professional. Few observations of Supreme Court in this context are worthy of reproduction:

"101. The Commission should have realized that different doctors have different approaches, for instance, some have more radical while some have more conservative approaches. All doctors cannot be fitted into a straitjacketed formula and cannot be penalized for departing from that formula….102. While this court has no sympathy for doctors who are negligent; it must also be said that frivolous complaints against doctors have increased by leaps and bounds in our country, particularly after the medical profession was placed within the purview of the Consumer Protection Act. To give an example, earlier when a patient who had a symptom of having a heart attack would come to a doctor, the doctor would immediately inject him with morphia or pethidine injection before sending him to the Cardiac Care Unit because in cases of heart attack time is the essence of the matter. However, in some cases, the patient died before he reached the hospital. After the medical profession was brought under the Consumer Protection Act vide Indian Medical Assn. v. V. P. Shantha ([1995] 6 SCC 651), doctors who administer morphia or pethidine injection are often blamed and cases of medical negligence are filed against them. The result is that many doctors have stopped giving (even as family physicians) morphia or pethidine injection even in emergencies despite the fact that from the symptoms the doctor honestly thought that the patient was having a heart attack. This was out of fear that if the patient died the doctor would have to face legal proceedings….111. The courts and the Consumer Fora are not experts in medical science, and must not substitute their own views over that of specialists. …112. It must be remembered that sometimes despite their best efforts the treatment of a doctor fails. For instance, sometimes despite the best effort of a surgeon, the patient dies. That does not mean that the doctor or the surgeon must be held to be guilty of medical negligence unless there is some strong evidence to suggest that he/she is."[31]

Courts endeavor to protect the medical professionals from harassment but do not give in to misplaced sympathies. In fact, the courts do not substitute their own judgment with that of the medical professionals. For instance, adoption of a procedure involving higher risk with the bona fide expectation of better chances of success in preference to a procedure involving lesser risk but greater chances of failure, even if it invites divergent views among doctors, would not lead to a finding of negligence.[32]

Advisory to Doctors and Safeguards in Criminal Prosecution by Supreme Court

Supreme Court in one case[33] noted broadly the precautions which ought to be taken, and the same are reproduced herein below:

"Precautions which doctors/hospitals/nursing homes should take:

a. Current practices, infrastructure, paramedical and other staff, hygiene, and sterility should be observed strictly. Thus, in Sarwat Ali Khan v. Prof. R. Gogi (OP No. 181 of 1997 decided on July 18, 2007 [NC]) the facts were that out of 52 cataract operations performed between September 26, 1995, and September 28, 1995, in an eye hospital, 14 persons lost their vision in the operated eye. An enquiry revealed that in the operation theater, two autoclaves were not working properly. This equipment is absolutely necessary to carry out sterilization of instruments, cotton, pads, linen, etc., and the damage occurred because of its absence in working condition. The doctors were held liable
b. No prescription should ordinarily be given without actual examination. The tendency to give prescription over the telephone, except in an acute emergency, should be avoided
c. A doctor should not merely go by the version of the patient regarding his symptoms but should also make his own analysis including tests and investigations where necessary
d. A doctor should not experiment unless necessary and even then he should ordinarily get a written consent from the patient

e. An expert should be consulted in case of any doubt. Thus, in Indrani Bhattacharjee (OP No. 233 of 1996 decided on 9-8-2007 [NC]), the patient was diagnosed as having 'mild lateral wall ischemia.' The doctor prescribed medicine for gastroenteritis but he expired. It was held that the doctor was negligent as he should have advised consulting a cardiologist in writing
f. Full record of the diagnosis, treatment, etc., should be maintained."

The above are in the nature of broad advisory.

Keeping in the view the rise in criminal prosecution of doctors, which is both embarrassing and harassing for them, and to protect them from frivolous and unjust prosecutions Supreme Court laid certain binding guidelines till statutory rules or instructions by the government in consultation with MCI are issued, which are as follows:[34]

1. Private complaint may not be entertained unless the complainant has produced *prima facie* evidence in the court in the form of a credible opinion given by another competent doctor
2. Investigation officer should obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam test to the facts collected in the investigation
3. Doctor may not be arrested in a routine manner unless the arrest is necessary for furthering the investigation or for collecting the evidence or if the investigation officer is satisfied that doctor may flee.

The necessity for obtaining independent medical opinion was insisted upon considering that the knowledge of medical science to determine whether the acts of medical professional amounts to negligent act within the domain of criminal law could not be presumed. This requirement was subsequently sought to be made a necessity by the Supreme Court even for initiating the action seeking imposition of civil penalties but was done away with thereafter for civil actions.[35]

Conclusion

Few would disagree that delinquency, like in every other profession, needs to also be dealt with sternly in the field of medicine. The reasons are not difficult to discern. The question only is of defining the contours of "delinquency" which may give rise to adverse legal consequences. The outcome of treatment is of minimal significance for the imponderables are many in the practice of medicine. Two competing interests, and each being equally important as the other, need to be balanced in the process of fixing the parameters of liability: One relates to freedom of a professional in arriving at the judgment and the other of the victims in which the existence of discretion of the medical professional is not sought to be foreclosed but only its abuse and recklessness with which it may be made. Indian courts in the process of arriving at a balance lean, perhaps not unjustifiably, heavily in favor of the doctors.

The law does not seek to make any unnecessary intrusion into the territory which rightfully belongs only to medical professionals, and judges do not seek to impose their own wisdom on to them. The legal system does not adopt complete hands off approach either and does scrutinize the actions of medical professional and seeks to punish those who fall below the minimum standard, and the test for judging the minimum standard is also heavily influenced by the prevalent medical practices and opinions, and the body of knowledge available as on the relevant date. The standards are not too high and by fastening the liability in certain cases accountability is reinforced for no one can remain immune to scrutiny. In this regard, law zealously safeguards the autonomy of medical professionals and fully realizes that prescribing unreasonably high standards may have a kind of chilling effect which is not desirable, however, the law also seeks to protect and safeguard the interests of a patient to expect a minimum standard of care.

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Conflicts of interest
There are no conflicts of interest.

Key References

1. Jacob Mathew v. State of Punjab (2005) 6 SCC 1.
2. Samira Kohli v. Dr. Prabha Manchanda (2008) 2 SCC 1.
3. Martin F. D'Souza v. Mohd. Ishfaq (2009) 3 SCC 1.
4. V Kishan Rao v. Nikhil Super Speciality Hospital (2010) 5 SCC 513.
5. Malay Kumar Ganguly v. Sukumar Mukherjee (2009) 9 SCC 21.

Endnotes

1. Author is an advocate practicing at New Delhi including before National Consumer Disputes Redressal Commission. Interactions held by the author at 23rd Conference of Indian Academy of Neurology in 2015 at Agra with medical professionals, subsequent to which the author was invited to contribute this article, have influenced the structuring of this article. He can be reached at amit@agrawalchambers.com.
2. Consequences of violating specific statutory provisions providing impermissible acts more precisely such as those under Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994, are not included in this category.
3. Section 304A, IPC reads as, "304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."
4. Section 337, IPC reads as, "337. Causing hurt by act endangering life or personal safety of others.—Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both."
5. Section 338, IPC reads as, "338. Causing grievous hurt by act endangering life or personal safety of others.—Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both."
6. Chapter VI A dealing constitution of the permanent *lok adalats* was inserted by way of Legal Services Authorities (Amendment) Act, 2002 w.e.f. 11.06.2002. Section 22C (1) of Legal Services

Authorities Act, 1987 (as amended) read with notification number S.O. 803(E) dated 20.03.2015 issued by Ministry of Law and Justice provides the jurisdiction of permanent *lok adalats* up to Rs. 1 Crore. The challenge to the constitutionality of the permanent *lok adalats* and their powers to adjudicate on merits were declined by the Supreme Court in 2012 in Bar Council of India v. Union of India (2012) 8 SCC 243.

7. Section 20A of the Indian Medical Council Act, 1956, reads as follows: "20A. Professional Conduct. 1. The Council may prescribe standards of professional conduct and etiquette and a code of ethics for medical practitioners. 2. Regulations made by the Council under subsection (1) may specify which violations thereof shall constitute infamous conduct in any professional respect, that is to say, professional misconduct and such provisions shall have effect notwithstanding anything contained in any law for the time being in force."
8. In Mr. D, An Advocate of the Supreme Court, AIR 1956 SC 102.
9. Laxman Balkrishna Joshi (Dr) v. Dr. Trimbak Bapu Godbole AIR 1969 SC 128.
10. In the context of criminal liability, classic statement of law by Sir Lawrence Jenkins in Emperor v. Omkar Rampratap (1902) 4 Bom LR 679 made in reference to Section 304A IPC approved by the Supreme Court subsequently and followed by the High Courts in general may also be quoted: "To impose criminal liability under Section 304-A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the causa causans; it is not enough that it may have been the causa sine qua non."
11. Postgraduate Institute of Medical Education and Research v. Jaspal Singh (2009) 7 SCC 330.
12. (2004) 6 SCC 422.
13. Jacob Matthew v. State of Punjab, Supreme Court Order dated 09.09.2004.
14. (2005) 6 SCC 1.
15. Laxman Balkrishna Joshi (Dr) v. Dr. Trimbak Bapu Godbole AIR 1969 SC 128.
16. This is known as Bolam test propounded by McNair J in Bolam v. Friern Hospital Management Committee (1957) 2 All ER 118 in the UK. It has been approved and followed by the courts in India. However, in the UK Bolam test has been slightly departed from wherein it has been held that course propounded by the medical professional to be reasonable practice it must also be logical.
17. V Kishan Rao v. Nikhil Super Speciality Hospital (2010) 5 SCC 513.
18. Spring Meadows Hospital v. Harjol Ahluwalia (1998) 4 SCC 39.
19. Illustrations taken from Supreme Court's judgments in Spring Meadows Hospital v. Harjol Ahluwalia (1998) 4 SCC 39 and Indian Medical Association v. V P Shantha (1995) 6 SCC 651.
20. Surendra Chauhan v. State of MP (2000) 4 SCC 110. See also, Martin F. D'Souza v. Mohd. Ishfaq (2009) 3 SCC 1.
21. V. Krishnakumar v. State of Tamil Nadu and Ors. (2015) 9 SCC 388.
22. P B Desai v. State of Maharashtra (2013) 15 SCC 481.
23. Nizam's Institute of Medical Science v. Prasanth S Dhananka (2009) 6 SCC 1.
24. Savita Garg v. Director, National Heart Institute (2004) 8 SCC 56.
25. Martin F. D'Souza v. Mohd. Ishfaq (2009) 3 SCC 1.
26. Vimal Kumar Mundra and Others v. Pardaya Memorial Hospital and Others IV (2013) CPJ 9A (CN) (Raj). In the appeal arising there from before the National Consumer Disputes Redressal Commission, the allegations of medical negligence were withdrawn, and the hospital agreed to make ex-gratia payment purely on humanitarian grounds, see Pardaya Memorial Hospital and Others v. Vimal Kumar Mundra and Others, First Appeal 604/2013, decided on 09.07.2014.
27. Titli v. Alfred Robert Jones AIR 1934 All 273.
28. Ramesh Chandra v. Regency Hospital Limited (2009) 9 SCC 709.
29. (2008) 2 SCC 1. Even though it was held that the doctors acted in excess of the consent, doctors were let off very leniently by the Supreme Court as they had acted in good faith and for the benefit of the patient in the given facts.
30. (2009) 9 SCC 21.
31. Martin F. D'Souza v. Mohd. Ishfaq (2009) 3 SCC 1. This judgment was observed to be per incuriam to a limited extent it required independent medical opinion even for civil action. In Kusum Sharma v. Batra Hospital (2010) 3 SCC 480 Supreme Court observed that "78. It is a matter of common knowledge that after happening of some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. A professional deserves total protection."
32. Kusum Sharma and Ors. v. Batra Hospital and Medical Research Centre and Ors. (2010) 3 SCC 480. Here, removal of malignant abdominal tumor by surgical operation adopting an anterior approach in preference to posterior approach, though failed to save the life of the patient, was not held to be negligent.
33. Martin F. D'Souza v. Mohd. Ishfaq (2009) 3 SCC 1.
34. Jacob Mathew v. State of Punjab (2005) 6 SCC 1. The Supreme Court in this case had observed that "28. A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation, and a quivering physician cannot administer the end-dose of medicine to his patient 29. If the hands are trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason—whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery nor can a physician successfully administer the life-saving dose of medicine. Discretion being the better part of valor, a medical professional would feel better advised to leave a terminal patient to his own fate in the case of emergency where the chance of success may be 10% (or so), rather than taking the risk of making a last ditch effort toward saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to society."
35. In Martin F. D'Souza v. Mohd. Ishfaq (2009) 3 SCC 1 necessity of medical opinion was observed to be mandatory even for civil cases which requirement was subsequently observed to be per incuriam in V Kishan Rao v. Nikhil Super Speciality Hospital (2010) 5 SCC 513.